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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ANTHONY SUCCI, individually and on behalf of all others similarly situated, Plaintiff, v. SUNCAST CORPORATION, an Illinois corporation, Defendant.	Case No. **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Anthony Succi ("Plaintiff"), individually and on behalf of all others similarly situated, by and through counsel, brings this class action against Defendant Suncast Corporation ("Suncast") as follows:

I. NATURE OF THE CASE

1. This is a class action lawsuit brought by Plaintiff on behalf of a class of all similarly situated individuals who purchased Suncast's Alpine Storage Shed model BMS8000 (the "BMS8000"). Plaintiff and putative Class members have been, and continue to be, injured by Suncast's placing into the stream of commerce storage sheds containing a false, inflated size and storage capacity, which Defendant manufactures, markets, distributes and sells to consumers across the country.

2. Because the purpose of a storage shed is to provide storage, the amount of space advertised via product specifications, product packaging and other methods is critical to consumers.

3. Plaintiff is one of the many consumers who purchased the BMS8000 based specifically upon Suncast's advertised size but who was denied that advertised size when he received the product which was significantly smaller than he was promised.

4. Defendant knew, or should have known, for years that the BMS8000 was smaller than advertised, inducing consumers to purchase the shed based on a false, inflated size and storage capacity, and further, causing Plaintiff and Class members to overpay.

5. Without correcting its material misrepresentations or omissions, Defendant has overcharged Plaintiff and Class members, and continues to do so, without warning Plaintiff and Class members that the BMS8000 is actually smaller and contains less storage capacity than Defendant otherwise advertises.

6. Plaintiff and the Class relied on Defendant's representations and warranties as to size and storage capacity when purchasing the BMS8000. They suffered harm as a result, in that they paid for six inches more width (approximately 31 cubic square feet) of storage space than they actually received.

7. Though Defendant has notice and knowledge of its material misrepresentations or omissions, Defendant has not offered to compensate its customers to remedy their damages.

8. Had Plaintiff and members of the putative Class known that the BMS8000 is smaller and contains less storage capacity than Defendant otherwise advertises, Plaintiff and members of the putative Class would either not have purchased the BMS8000 at all, or would have paid less than the price actually paid.

9. As a direct and proximate result of Defendant's deceptive acts and practices, Plaintiff and members of the putative Class have sustained economic injury by overpaying and being deprived of the full intended use of their purchased sheds. Plaintiff seeks damages under statutory and common law for himself and members of the putative Class, of which Plaintiff is a member, as identified below.

II. THE PARTIES

10. Plaintiff is Anthony Succi a natural person and resident and citizen of Pennsylvania, who resides as 30 Firethorn Drive, Perkasie, Pennsylvania, 18944.

11. Defendant Suncast Corporation is an Illinois corporation having its place of business at 701 North Kirk Road, Batavia, Illinois, 60510. Defendant is headquartered in, and conducts business relevant to Class members' claims from, Illinois. Defendant manufactures the products at issue at its Batavia facility and all of the warranties and promotional activities arise from Defendant's conduct in the State of Illinois.

III. JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because the amount in controversy exceeds $5,000,000.00 exclusive of interest and costs, and more than two-thirds

of the members of the proposed class (hereinafter "Class") are citizens of states different from that of Defendant.

13. This Court has jurisdiction under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, because the amount in controversy exceeds $50,000 exclusive of interest and costs, and this is a class action with more than prospective 100 plaintiffs. In addition, this Court has jurisdiction under the Class Action Fairness Act of 2005; and this Court has supplemental jurisdiction over this claim, as well as other claims asserted in the Complaint.

14. This Court has personal jurisdiction over Defendant because it is incorporated under the laws of Illinois; it is authorized to do business and is conducting business throughout the United States, including Illinois; because Defendant manufactures its products in this District; because Defendant falsely markets its merchandise from within this District; and, because Defendant placed its falsely marketed merchandise into the national stream of commerce from this District.

15. Venue properly lies in this District pursuant 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to this claim occurred in this District. Venue is also proper because: (a) Defendant is authorized to conduct business in this District and has intentionally availed itself of the laws and markets within this District; (b) Defendant conducts substantial business in this District; and (c) Defendant is subject to personal jurisdiction in this District.

IV. FACTUAL BACKGROUND

A. Defendant Markets and Sells the Alpine Storage Shed BMS8000

16. Suncast is a national company, which holds itself out as a market leader in "custom wood structures and high-quality resin products made in the U.S.A.," with over 25 years of experience designing, developing, and manufacturing products for the "whole

home."[1]

17. Suncast markets over "1,000 items, sold through authorized retailers in more than 25,000 locations nationwide, with over 15 million products sold annually." On its facebook page, Suncast represents that "[a]ll Suncast merchandise is manufactured in our 700,000-square foot Batavia plant, which boasts 90 production lines and over 100 injection molding and extrusion machines, allowing us to convert over 100 million pounds of plastic annually." [2]

18. One of the products that Suncast develops, manufactures, markets, sells and distributes, both directly and through its vast authorized distribution network throughout the United States, is the BMS8000. Defendant's authorized dealers include Home Depot, Amazon, and Walmart.

19. The BMS8000 storage shed is one of Suncast's largest storage solution products. On one of the pages on its website, labeled "Storage 101," Suncast gives consumers "a useful guide to help you pick the perfect shed to store everything you need and complete your outdoor space."[3] Of its various storage solutions, which include smaller horizontal and vertical sheds, Suncast represents to consumers that its "storage sheds" have the largest capacity. "Storage sheds" are supposed to enable the consumer to store very large items, and Suncast's webpage represents such items by including pictures of a canoe, patio umbrella, tractor, tent, bicycle motorcycle, wheelbarrow, trash can and outdoor tools. Because Suncast's "storage sheds" have the largest capacity, Suncast tells consumers that these sheds are the most expensive storage solution and the most time consuming to assemble.

20. On its web page, Defendant markets the BMS8000 as having exterior

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[1] https://www.suncast.com/about-suncast (last visited June 24, 2016).
[2] https://www.facebook.com/suncastcorp/info/?entry_point=page_nav_about_item&tab=page_info (last visited June 24, 2016).
[3] https://www.suncast.com/sheds-101/ (last visited June 21, 2016)

dimensions of "7' 6" W x 10' 8-1/4" D x 8' 6-3/4" H."[4] *See* Figure 1.

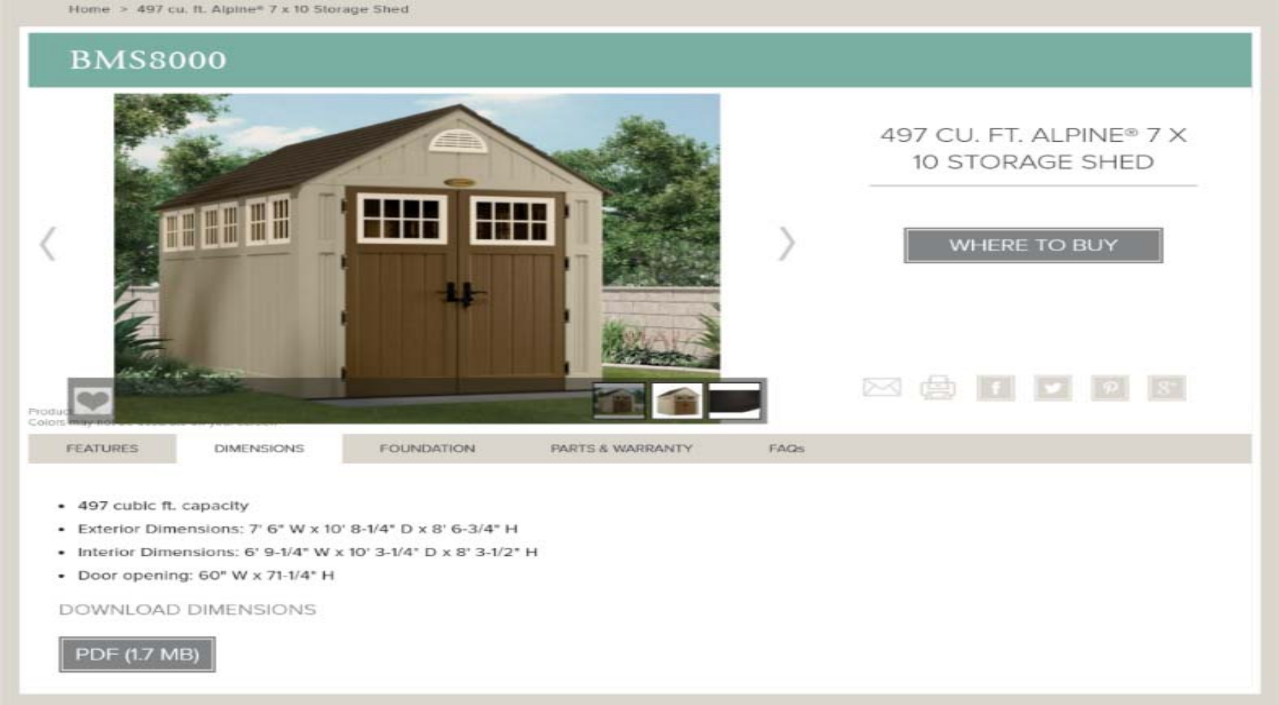
Home > 497 cu. ft. Alpine® 7 x 10 Storage Shed
BMS8000
497 CU. FT. ALPINE® 7 X 10 STORAGE SHED
WHERE TO BUY
FEATURES
DIMENSIONS
FOUNDATION
PARTS & WARRANTY
FAQs
497 cubic ft. capacity
Exterior Dimensions: 7' 6" W x 10' 8-1/4" D x 8' 6-3/4" H
Interior Dimensions: 6' 9-1/4" W x 10' 3-1/4" D x 8' 3-1/2" H
Door opening: 60" W x 71-1/4" H
DOWNLOAD DIMENSIONS
PDF (1.7 MB)

Figure 1: Alpine Storage Shed

21. Suncast closely replicates these represented dimensions on its product packaging, where it describes the BMS8000 dimensions as "7½ FT. x 10½ FT."

[4] Suncast, BMS8000, https://www.suncast.com/bms8000.html (last visited June 24, 2016).

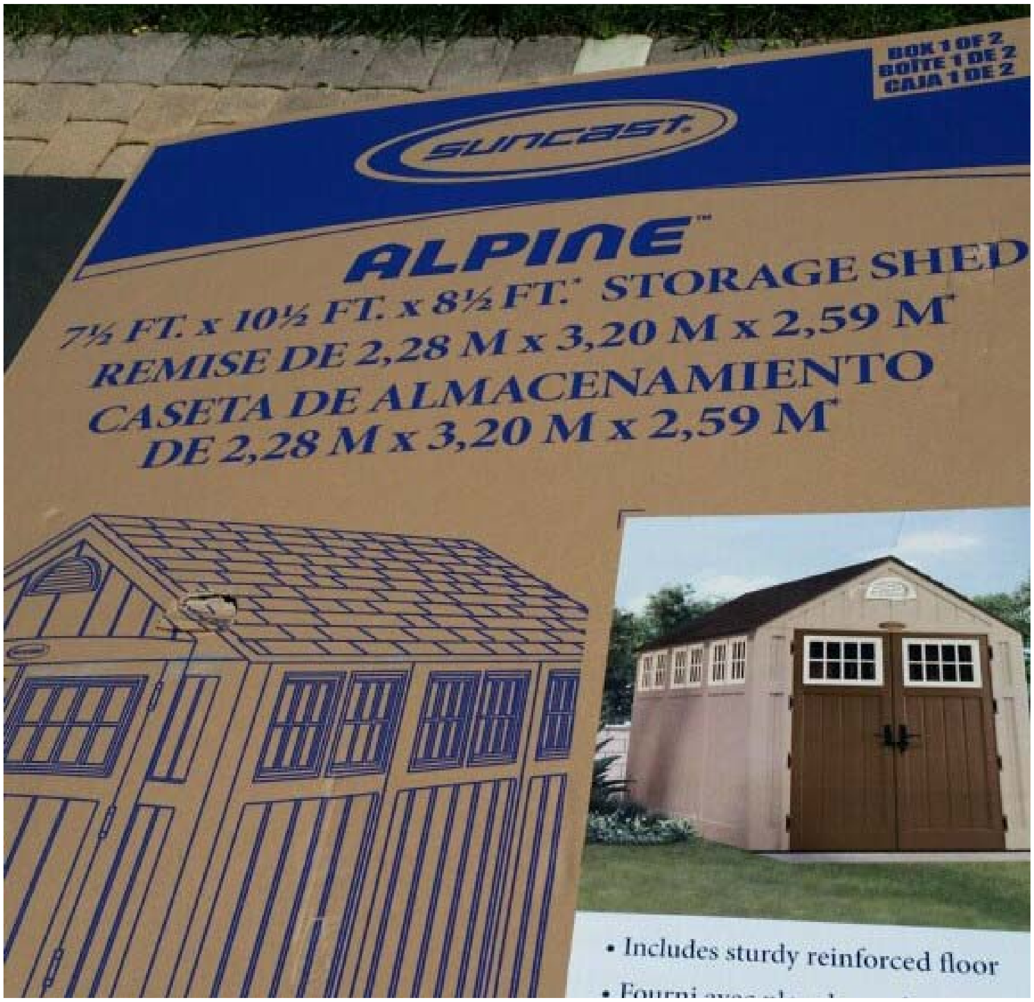
BOX 1 OF 2
BOÎTE 1 DE 2
CAJA 1 DE 2
suncast
ALPINE
7½ FT. x 10½ FT. x 8½ FT.* STORAGE SHED
REMISE DE 2,28 M x 3,20 M x 2,59 M*
CASETA DE ALMACENAMIENTO
DE 2,28 M x 3,20 M x 2,59 M*
• Includes sturdy reinforced floor

Figure 2: Alpine Storage Shed, Product Packaging

22. Defendant's dealers reinforce Suncast's representations as to the dimensions of the BMS8000: Home Depot (Figure 3); Amazon (Figure 4); and, Walmart (Figure 5).

23. Though individual values vary slightly, the width of the BMS8000 is marketed by Defendant and its authorized dealers, generally as 7 feet 6 inches, with Home Depot being the one exception that specifies the width ¼ inch smaller, as 7 feet 5-3/4 inches.

Source	Marketed Width
Suncast Webpage	7ft. 6in.
Packaging	7ft. 6in.
Home Depot	7ft. 5-3/4in.
Amazon	7ft. 6in.
Walmart	7ft. 6in.

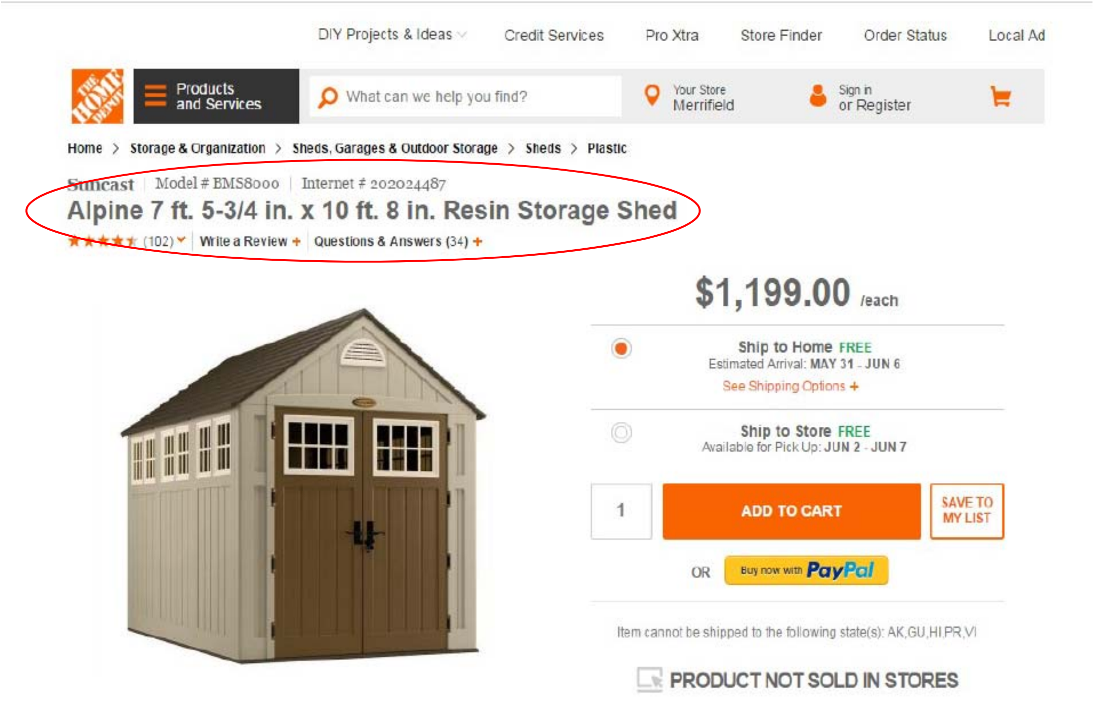
DIY Projects & Ideas
Credit Services
Pro Xtra
Store Finder
Order Status
Local Ad
Products and Services
What can we help you find?
Your Store Merrifield
Sign in or Register
Home > Storage & Organization > Sheds, Garages & Outdoor Storage > Sheds > Plastic
Suncast Model # BMS8000 Internet # 202024487
Alpine 7 ft. 5-3/4 in. x 10 ft. 8 in. Resin Storage Shed
(102) Write a Review + Questions & Answers (34) +
$1,199.00 /each
Ship to Home FREE
Estimated Arrival: MAY 31 - JUN 6
See Shipping Options +
Ship to Store FREE
Available for Pick Up: JUN 2 - JUN 7
1
ADD TO CART
SAVE TO MY LIST
OR
Buy now with PayPal
Item cannot be shipped to the following state(s): AK,GU,HI,PR,VI
PRODUCT NOT SOLD IN STORES

Figure 3: Home Depot Suncast Alpine Shed BMS8000

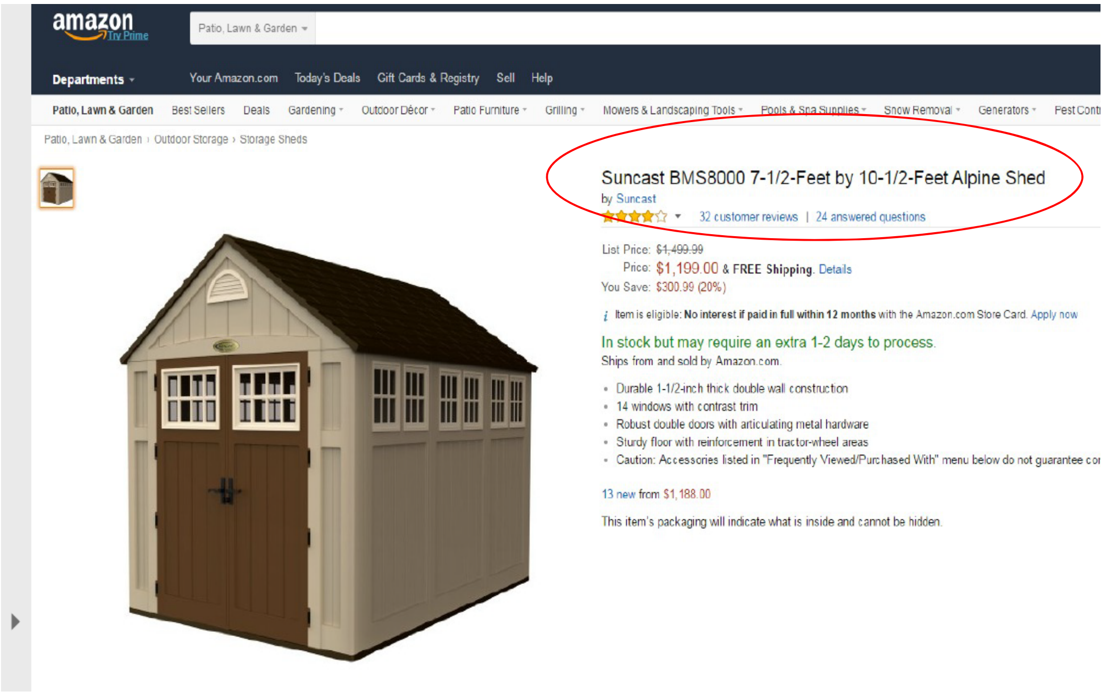
amazon
Try Prime
Patio, Lawn & Garden
Departments
Your Amazon.com
Today's Deals
Gift Cards & Registry
Sell
Help
Patio, Lawn & Garden
Best Sellers
Deals
Gardening
Outdoor Décor
Patio Furniture
Grilling
Mowers & Landscaping Tools
Pools & Spa Supplies
Snow Removal
Generators
Patio, Lawn & Garden › Outdoor Storage › Storage Sheds
Suncast BMS8000 7-1/2-Feet by 10-1/2-Feet Alpine Shed
by Suncast
32 customer reviews | 24 answered questions
List Price: $1,499.99
Price: $1,199.00 & FREE Shipping. Details
You Save: $300.99 (20%)
Item is eligible: No interest if paid in full within 12 months with the Amazon.com Store Card. Apply now
In stock but may require an extra 1-2 days to process.
Ships from and sold by Amazon.com.
Durable 1-1/2-inch thick double wall construction
14 windows with contrast trim
Robust double doors with articulating metal hardware
Sturdy floor with reinforcement in tractor-wheel areas
Caution: Accessories listed in "Frequently Viewed/Purchased With" menu below do not guarantee co
13 new from $1,188.00
This item's packaging will indicate what is inside and cannot be hidden.

Figure 4: Amazon Suncast Alpine Shed BMS8000

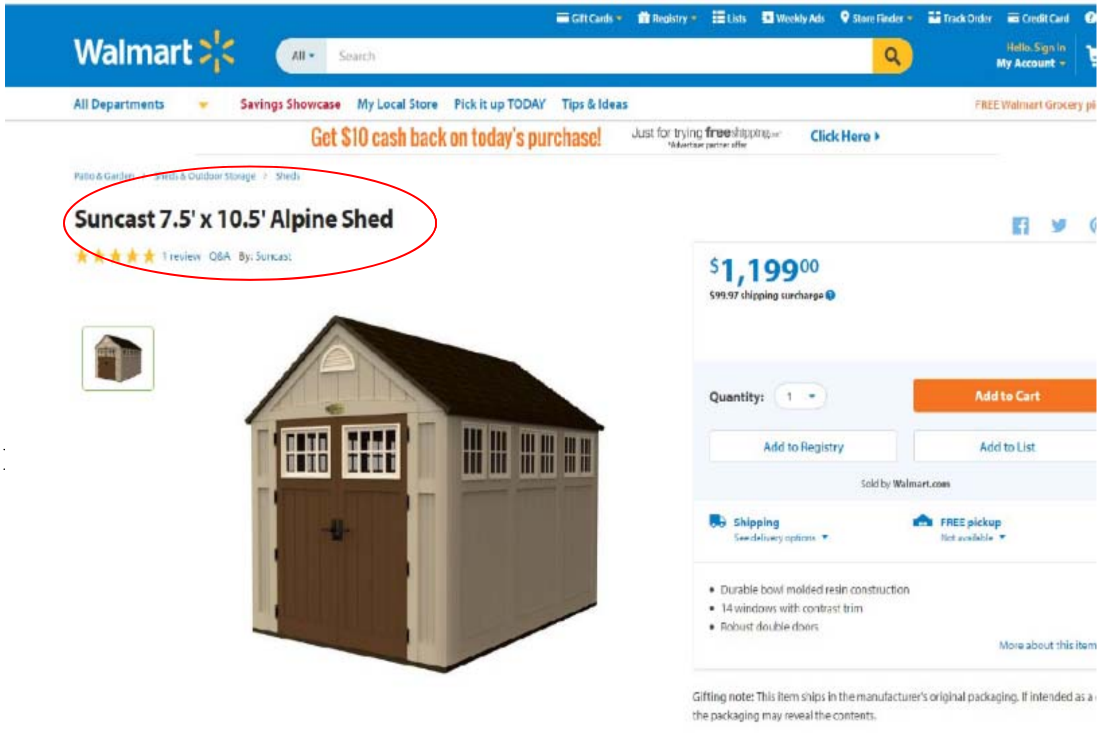
Walmart
All Departments
Savings Showcase
My Local Store
Pick it up TODAY
Tips & Ideas
Get $10 cash back on today's purchase!
Click Here
Suncast 7.5' x 10.5' Alpine Shed
$1,199.00
Quantity: 1
Add to Cart
Add to Registry
Add to List
Shipping
FREE pickup
Durable bowl molded resin construction
14 windows with contrast trim
Robust double doors
More about this item

Figure 5: Walmart Suncast Alpine Shed

B. Plaintiff Purchases a BMS80000 and Discovers Suncast's False Representations of Size and Capacity

24. On May 7, 2016 Plaintiff purchased a BMS8000 for $1270.94 (including tax) from Defendant's authorized dealer, Home Depot.

25. Prior to that purchase, Plaintiff reviewed Defendant's website and understood the information provided to mean the width of the shed, and not the overhang, measured 7½ feet. Plaintiff purchased the BMS8000 based on Defendant's representations, including the representations related to the size and storage capacity of the BMS8000.

26. As marketed, and as reflected in its purchase confirmation, Plaintiff believed he was being sold a BMS8000 with the advertised dimensions being usable storage space.

27. Plaintiff subsequently received his BMS8000. Consistent with Defendant's marketing and Plaintiff's expectations, the packaging warranted Plaintiff's shed to be "7½ FT. x 10½ FT. x 8½ FT." Figure 2, *supra*.

28. Plaintiff assembled Defendant's product as described in Suncast's assembly instructions and did not alter the BMS8000 before, during, or after assembly. The assembly was a time consuming and labor intensive process, which took Plaintiff approximately 5 hours.

29. Upon completion, Plaintiff examined the structure and discovered that it was not as large as was represented. Plaintiff measured the external dimensions and learned that, despite Defendant's advertising and warranty, the BMS8000 was not 7 feet 5-3/4 inches in width, but was instead exactly 7 feet in width. Figures 6 and 7.

Figure 6: Alpine BMS800, as assembled

Figure 7: Alpine BMS800, as assembled

30. The BMS8000 was defective when it left the exclusive control of the Defendant, as it lacked the characteristics, use, and benefits as promised

C. Defendant Refused to Cure the Defect.

31. Shortly after purchase and assembly, Plaintiff contacted Defendant, through its authorized dealer Home Depot, and complained that the shed he purchased was almost ten percent smaller in width than Defendant advertised and represented.

32. Plaintiff complained that that he had no reason to suspect or know that the shed was actually smaller in size than advertised.

33. Home Depot offered to replace Plaintiff's BMS8000 with a second BMS8000, the exact same shed he already purchased and spent hours putting together. Specifically, Home Depot informed Plaintiff that he could disassemble his current shed, ship it back to Home Depot and they would send him a second BMS8000. Plaintiff declined Home Depot's

offer because a product replacement under these circumstances did not make sense.

34. Defendant's authorized dealer did not agree to provide a shed of the promised specifications at the already accepted purchase price.

D. Defendant Knew or Should Have Known that It was Falsely Marketing the Alpine BMS8000 to Plaintiff and the Class.

35. Defendant markets the BMS8000 to induce consumers to purchase a shed that is larger and has with greater storage capacity than it actually has.

36. Defendant knew that the Alpine BMS8000 sold to Plaintiff through its authorized dealer was six inches shorter than Defendant's advertisements.

37. Defendant, through its authorized dealers, has received numerous comments and complaints about the disparity in size between the BMS8000 as advertised and the BMS8000 in fact. Home Depot has provided a number of those complaints on its product review web page:[5]

> ***Sharon, Norwich, CT - May 10, 2016***. *If building a pressure treated platform, the shed is 7 feet wide and 10 feet 8 inches long!*
>
> ***Babycakes311p, Cleveland Heights, Ohio - September 19, 2015.*** *I am a female with a two car garage, and was only able to use one side, die to the other side being used for storage. I looked online for vinyl sheds for several months before deciding on this shed. I had a concrete pad installed. ***PLEASE BE AWARE THAT THE DIMENSIONS PROVIDED ARE FOR THE OVERHANG OF THE ROOF. THE ACTUAL FOOTPRINT OF THE SHED IS 7FT.X11FT.****
>
> ***RCC8, NC - April 21, 2013***. *wrong! [sic] The overall width is 84"*
>
> ***Mike – Review Provided by Home Depot - May 21, 2012.*** *I bought this based on advertised size of 7 feet 6 inches wide and what I received was a 7 foot wide shed. I could have purchased a 7 foot wide shed anywhere.*
>
> ***herbieup, Apopka, Florida - May 1, 2011***. *Spent the weekend installing the shed and it looks great, but there are a few things that anyone approaching this should plan for*

[5] The Home Depot, Suncast Model # BMS8000, http://www.homedepot.com/p/Suncast-Alpine-7-ft-5-3-4-in-x-10-ft-8-in-Resin-Storage-Shed-BMS8000/202024487 (last visited June 3, 2016).

in advance. Directions are not the greatest, download a copy from the suncrest [sic] website in advance and see what you are in for. Directions call for a foundation of 7'-8", but the shed is only 7'-0' wide, not sure what that was about.

MSM76, OH - April 8, 2011. *Overall I am pleased with the Suncast Alpine, with one exception. THIS SHED ID ONLY 7 FEET WIDE!!! The 7ft 5 and 3/4 inch width in the specs includes the roof overhang on the sides. This was VERY disappointing, because the inside width is only 6 ft 10 inches.*

VirtualValerie, Crystal River, FL - March 2, 2011. *of [sic] the shed is actually 7 feet wide, not 7.5.*

38. Defendant, only in response to and having received consumer complaints, has acknowledged "[a]t ground level from one side to the other at the front, [the BMS8000] measures 84 inches [7 feet]. Including the overhang on each side of the roof, it measures 90 inches [7 feet 5 inches] . . .."[6]

39. But, despite Defendant knowing that the BMS8000 does not conform to its marketing specifications, it continues to deceptively market it as providing more storage than it actually has.

40. At no time did Defendant advise either Plaintiff or Class members, prior to purchase, that the BMS8000 is actually smaller than advertised. As a result, Plaintiff and Class members overpaid for the sheds based upon a false and inflated size.

41. Defendant's misrepresentations and omissions caused Plaintiff and the Class to believe that they were purchasing a shed approximately ten percent wider than they actually received.

42. Defendant's misrepresentations created a likelihood of deception, because reasonable consumers, such as Plaintiff and the Class, believed that they were purchasing a product with 7 feet 6 inches in width of storage space when in fact they were not.

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[6] The Home Depot, Suncast Model # BMS8000, http://www.homedepot.com/p/Suncast-Alpine-7-ft-5-3-4-in-x-10-ft-8-in-Resin-Storage-Shed-BMS8000/202024487 (last visited June 24, 2016).

43. Defendant's misrepresentations were intentionally used in the conduct of trade or commerce.

44. Defendant's aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

45. Defendant engaged in the above-described actionable statements and omissions with knowledge that the representations were false and/or misleading, and with the intent that consumers rely upon such statements and omissions.

46. Alternatively, Defendant was reckless in not knowing that these representations were false and misleading at the time they were made. Defendant had exclusive access to data and information concerning its sheds, their actual size and storage capacity that Plaintiff and Class members did not have access to and could not review prior to their purchases.

47. Had Plaintiff and the Class known of the BMS8000's actual dimensions, they either would not have purchased the shed, or would have paid less for it.

V. CLASS ACTION ALLEGATIONS

48. Class Definition. Plaintiff seeks to bring the claims below as a class action, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and all others similarly situated. The proposed Class ("the Class") is defined as:

> All individuals who purchased the Suncast Alpine Storage Shed BMS8000 from Defendant or Defendant's authorized dealers.

49. Plaintiff reserves the right to re-define the Class prior to class certification.

50. Numerosity. The number of persons who are members of the Class, as described above, is so numerous that joinder of all members in one action is impracticable. Upon information and belief, thousands of individuals purchased Defendant's BMS8000.

51. Commonality. All actions and inactions by the Defendant at issue here are similarly common. A determination that Defendant falsely marketed the BMS8000's available storage space as 7.5 feet wide, when it is only 7 feet wide, will apply to all members of the Class. Further, whether Defendant violated any applicable state laws and pursued the course of conduct complained of here, whether Defendant acted intentionally or recklessly in engaging in the conduct described herein, and the extent of the appropriate measure of injunctive and declaratory relief, damages, and restitution are common questions to the Class.

52. Predominance. Questions of law and fact that are common to the Class predominate over individual questions because the Defendant's actions complained of herein are generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

a. Whether Defendant violated Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS § 505/2, *et seq.*;

b. Whether Defendant violated Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*;

c. Whether Defendant misrepresented the storage dimensions of the Alpine BMS8000; and,

d. Whether the Defendant induced consumers to purchase the Alpine BMS8000 based on its false representations about those dimensions.

53. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff sustained damages as a result of his reliance on Defendant's misrepresentations, warranties and unlawful conduct, as did each member of the Class.

54. Adequacy of Representation. Plaintiff will fully and adequately represent and protect the interests of the Class because of the common injuries and interests of the members of the Class and the singular conduct of Defendant that is or was applicable to all members of the Class. Plaintiff has retained counsel who are competent and experienced in the

prosecution of class action litigation. Plaintiff has no interests that are contrary to or in conflict with those of the Class he seeks to represent.

55. Superiority: A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards of conduct for Defendant under the laws alleged herein.

56. The claims of the Class may be certified under Rule 23(b)(1), (b)(2) and/or (b)(3). The members of the Class seek declaratory and injunctive relief but also seek sizeable monetary relief.

VI. CLAIMS FOR RELIEF

COUNT I
Violation of the Magnuson-Moss Warranty Act

57. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

58. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (the "Act") in response to widespread consumer complaints regarding misleading and deceptive warranties. The Act imposes civil liability on any "warrantor" for, *inter alia*, failing to comply with any obligation under written and implied warranties. 15 U.S.C. § 2310(d)(1).

59. The BMS8000 is a "consumer product" as defined by § 2301(1).

60. Plaintiff and Class members are "consumers" and "buyers" as defined by § 2301(3).

61. Defendant is a “warrantor” and “supplier” as defined by §§ 2301(4) and (5).

62. As alleged herein, Defendant sold the BMS8000 in its regular course of business to Plaintiff and Class members. Through its advertising and on its packaging, Defendant warranted the Alpine BMS8000 to be 7.5 feet x 10.5 feet x 8.5 feet, as assembled. Defendant thus made promises and representations in an express warranty provided to all consumers, which became the basis of the bargain between Plaintiff, Class members, and Defendant.

63. Defendant’s written affirmations of fact, promises and/or descriptions as alleged are each a “written warranty” within the meaning of the Magnuson-Moss Act, 15 U.S.C. §2301(6).

64. At the time Defendant issued the written warranties for its sheds, Defendant knew and had notice that the BMS8000 was not of the size and did not contain the storage capacity represented. Defendant's continued misrepresentations and omissions concerning the BMS8000, are "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce," and, accordingly, are unlawful. 15 U.S.C. §§ 2310(b), 15 U.S.C. § 45(a)(1).

65. Defendant breached its warranties because the sheds are smaller and contain less storage capacity than Defendant otherwise advertises and warrants, causing Plaintiff and Class members to overpay for the sheds based upon a false, inflated size. This defect substantially impairs the use and value of the BMS8000.

66. The latent defect at issue herein existed when the BMS8000 sheds left Defendant’s possession or control and were sold to Plaintiff and the Class members. The defect was undiscoverable to Plaintiff and the Class members at the time of purchase of the sheds.

67. All conditions precedent to seeking liability under this claim for breach of express warranty have been performed by or on behalf of Plaintiff and others in terms of paying for the goods at issue. Defendant has been aware or should have been aware of the defect in the sheds and breach of the warranties, and has had an opportunity for years to cure the defect for Plaintiff and all Class members, but has failed to do so.

68. Plaintiff contacted Defendant through its authorized dealer, and demanded that it deliver the product as warranted at purchase. Defendant failed to perform under the warranty by agreeing only to re-deliver the same defective product.

69. Defendant's breaches of warranty have caused Plaintiff and Class members to suffer monetary loss by overpaying for products, and entering into transactions they would not have entered into for the consideration paid. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff and Class members have suffered damages and continue to suffer damages, including economic damages.

70. As a result of the breach of these warranties, Plaintiff and Class members are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

COUNT II
Breach of Express Warranty

71. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

72. As set forth herein, Defendant made express warranties regarding the size and storage capacity of the BMS8000.

73. These representations and promises became part of the basis of the bargain between the parties and created a collective "express warranty" that the BMS8000 would conform to Defendant's specifications, affirmations and promises.

74. Defendant breached the express warranty by supplying BMS8000 sheds in a condition that does not satisfy its warranty obligations and by failing to compensate Plaintiffs for damages caused purchasing its product.

75. Defendant's conduct constitutes a breach of express warranties under the following state statutes:

a. Ala. Code § 7-2-313, *et seq.*;

b. Alaska Stat. § 45.02.313, *et seq.*;

c. Ariz. Rev. Stat. § 47-2313, *et seq.*;

d. Ark. Code § 4-2-313, *et seq.*;

e. Cal. Com. Code § 2313, *et seq.*;

f. Colo. Rev. Stat. § 4-2-313, *et seq.*;

g. Conn. Gen. Stat. § 42a-2-313, *et seq.*;

h. 6 Del. C. § 2-313, *et seq.*;

i. D.C. Code § 28:2-313, *et seq.*;

j. Fla. Code § 672.313, *et seq.*;

k. O.C.G.A. § 11-2-313, *et seq.*;

l. Haw. Rev. Stat. § 490:2-313, *et seq.*;

m. Idaho Code § 28-2-313, *et seq.*;

n. 810 Ill. Comp. Stat. 5/2-313, *et seq.*;

o. Ind. Code § 26-1-2-313, *et seq.*;

p. Iowa Code § 554.2313, *et seq.*;

q. Kan. Stat. § 84-2-313, *et seq*.;

r. Ky. Rev. Stat. § 355.2-313, *et seq*.;

s. La. Rev. Stat § 9:2800.53(6) , *et seq*.;

t. 11 M.R.S.A. § 2-313, *et seq*.;

u. Md. Code Ann., Com. Law § 2-313, *et seq*.;

v. Mass. Code 106, § 2-313, *et seq*.;

w. Mich. Comp. Laws 440.2313, *et seq*.;

x. Minn. Stat. § 336.2-313, *et seq*.;

y. Miss. Code § 75-2-313, *et seq*.;

z. Mo. Rev. Stat. § 400.2-313, *et seq*.;

aa. Mont. Code § 30-2-313, *et seq*.;

bb. Neb. U.C.C. § 2-313, *et seq*.;

cc. Nev. Rev. Stat. § 104.2313, *et seq*.;

dd. N.H. Rev. Stat. § 382-A:2-313, *et seq*.;

ee. N.J. Stat. § 12A:2-313, *et seq*.;

ff. N.M. Stat. § 55-2-313, *et seq*.;

gg. N.Y. U.C.C. § 2-313, *et seq*.;

hh. N.C. Gen. Stat. § 25-2-313, *et seq*.;

ii. N.D. Cent. Code § 41-02-30, *et seq*.;

jj. Ohio Rev. Code § 1302.26, *et seq*.;

kk. Okla. Stat. Tit. 12A, § 2-313, *et seq*.;

ll. Or. Rev. Stat. § 72.3130, *et seq*.;

mm. 13 Pa. Cons. Stat. § 2313, *et seq*.;

nn. R.I. Gen. Laws § 6A-2-313, *et seq*.;

oo. S.C. Code § 36-2-313, *et seq*.;

pp. S.D. Codified Laws § 57A-2-313, *et seq*.;

qq. Tenn. Code § 47-2-313, *et seq*.;

rr. V.T.C.A., Bus. & C. § 2.313, *et seq*.;

ss. Utah Code § 70A-2-313, *et seq*.;

tt. Vt. Stat. Tit. 9A, § 2-313, *et seq*.;

uu. Va. Code § 8.2-313, *et seq*.;

vv. Wash. Rev. Code § 62A.2-313, *et seq*.;

ww. W. Va. Code § 46-2-313, *et seq*.;

xx. Wis. Stat. § 402.313, *et seq*.; and

yy. Wyo. Stat. § 34.1-2-313, *et seq*.

76. All conditions precedent to seeking liability under this claim for breach of express warranty have been performed by or on behalf of Plaintiff and others in terms of paying for the goods at issue. Defendant has been aware or should have been aware of the defect in the sheds and breach of the warranties, and has had an opportunity for years to cure the defect for Plaintiff and all Class members, but has failed to do so.

77. Plaintiff contacted Defendant through its authorized dealer, and demanded that it deliver the product as warranted at purchase. Defendant failed to perform under the warranty by agreeing only to re-deliver the same defective product.

78. Defendant's breaches of warranty have caused Plaintiff and Class members to suffer monetary loss by overpaying for products, and entering into transactions they would not have entered into for the consideration paid. As a direct and proximate result of Defendant's breaches of express warranty, Plaintiff and Class members have suffered damages and continue to suffer damages.

79. As a result of the breach of these warranties, Plaintiff and Class members are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

COUNT III
Negligent Misrepresentation

80. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

81. Defendant made false statements of material fact about the dimensions and storage capacity of the BMS8000 in advertising and product packaging as alleged herein.

82. Defendant's representations are false and misleading because the sheds were not of the size and capacity represented.

83. At the time of sale, Defendant knew or should have known about its false and misleading statements concerning the size and capacity of its sheds.

84. Defendant also failed to disclose, concealed, suppressed and omitted material information concerning the size and storage capacity of its sheds.

85. Through numerous complaints, Defendant had access to the truth about the dimensions, but failed to act on that information in any way, including changing the advertised shed dimensions or manufacturing the shed to the promised dimensions. Defendant carelessly and negligently disregarded the truth, and continued to conduct business in a manner that defrauded consumers, including Plaintiff and the Class.

86. Defendant used the misrepresented dimensions to induce Plaintiff and the Class to purchase the BMS8000.

87. Defendant intended that Plaintiffs rely upon its material misrepresentations and

omissions to purchase the BMS8000 and Plaintiff and the Class believed Defendant's representations to be true, and justifiably relied on those representations when making their purchases.

88. Defendant, as the manufacturer, distributer and seller of the product, owed Plaintiff and the Class a duty to communicate accurately and conduct fair dealings.

89. Plaintiff and the Class suffered damages as a result of Defendant's negligent misrepresentations.

COUNT IV
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS § 505/2, *et seq.*)

90. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

91. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act". 815 ILCS § 505/2.

92. As alleged herein, Defendant is an Illinois corporation, manufactures all of its products, including the BMS8000 in Illinois, and all of the advertising related thereto emanates from Defendant's Illinois headquarters.

93. Further, on its website, Suncast represents that it exclusively operates under the laws of the State of Illinois and that exclusive jurisdiction lies in federal or state courts located in Cook County:

> Access to or use of this Website by User shall not be construed as Suncast's

> purposeful availment of the privilege or benefits of doing business in any state or legal jurisdiction other than the State of Illinois. User's agreement to these Terms shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflicts or choice of laws principles. In any dispute arising hereunder or otherwise connected with this Website or these Terms, the parties hereto consent exclusively to personal jurisdiction of the Federal or state courts located in the State of Illinois, County of Cook.[7]

94. These connections to Illinois show that this matter arises primarily and substantially in Illinois.

95. Plaintiff and members of the Class are consumers who purchased products from Defendant manufactured in Illinois for their personal use.

96. Defendant made false and fraudulent statements, misrepresented material facts, and made material omissions in advertising and on product packaging regarding its Alpine storage shed by marketing that, as assembled, it was 7.5 ft. x 10.5 ft. Because the size of the Alpine storage shed is actually 7 ft. x 10.5 ft. Defendant's misrepresentation constitutes deceptive and unfair acts or practices as prohibited by the ICFA.

97. Plaintiff and the Class relied on Defendant's representations regarding the size of the shed when deciding whether to purchase the shed.

98. Defendant intended that Plaintiff and the Class rely on the false statements, labeling, misrepresentations, and omissions of material facts when purchasing the Alpine BMS8000.

99. Had Plaintiff and the Class been aware of the true facts regarding the Alpine BMS8000, they would not have purchased it, or would have paid less for it.

100. As a result of Defendant's violations, Plaintiff and the Class suffered damages and are entitled to recover those damages, plus attorney's fees from Defendant.

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[7] https://www.suncast.com/index.php/terms-and-conditions (last visited June 21, 2016).

COUNT V
Violation of the Illinois Uniform Deceptive Trade Practices Act
(815 ILCS § 510/2, *et seq.*)

101. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

102. The Illinois Uniform Deceptive Trade Practices Act ("UDTA") prohibits advertising "goods or services with the intent not to sell them as advertised." 815 ILCS § 510/2(a)(9). It also prohibits engaging "in any other conduct which similarly creates a likelihood of confusion or misunderstanding." *Id.* at 510/2(a)(12).

103. Defendant falsely advertised and sold its Alpine BMS8000 as measuring 7.5 ft. x 10.5 ft.

104. The packing material for the BMS8000 falsely represented the shed dimensions, guaranteeing that consumers would misunderstand or be confused about the nature of their purchase.

105. Defendant's conduct was prohibited under the UDTA and Plaintiff and the Class suffered injuries as a result.

COUNT VI
Unjust Enrichment

106. Plaintiff and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

107. Defendant received a benefit of purchase proceeds for a width of 7 feet 6 inches of storage space, despite providing only a width of 7 feet of storage space.

108. Plaintiff and the Class suffered a detriment, in that they were denied one-half foot of storage space Defendant warranted they would receive.

109. Defendant's retention of proceeds it misled Plaintiff and the Class to obtain,

and for which it provided no consideration, unambiguously offends the principles of fair trade and equity.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Class, requests the following relief:

1. An order certifying this action as a class action under Rule 23 of the Federal Rules of Civil Procedure;

2. An order designating Plaintiff as representative of the Class and his undersigned counsel as Class Counsel;

3. Judgment in favor of Plaintiff and the Class, and against Defendant;

4. An order enjoining Defendant from making false representations and omissions concerning the Alpine BMS8000 being sold to customers;

5. An award to Plaintiff and the Class for damages equal to the amount of actual damages that they sustained;

6. An award to Plaintiff and the Class for attorneys' fees and costs, including interest, as allowed or required by law; and,

7. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby requests trial by jury of all issues triable by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 24, 2016

Respectfully submitted,

By: */s/ Katrina Carroll*

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